

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

ARTHUR BALLINGER, IV,

Plaintiff,

v.

Case No. 2:11-cv-00461

STATE OF WEST VIRGINIA,  
DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY,  
DIVISION OF CORRECTIONS,  
BRIAN GREENWOOD, Hearing Officer,  
and  
JIM RUBENSTEIN,  
Commissioner of Corrections,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

The plaintiff was formerly an inmate at Mount Olive Correctional Complex. During his incarceration, the undersigned found that while he was incarcerated or detained, the plaintiff had filed at least three actions in a court of the United States which were dismissed as frivolous, malicious or for failure to state a claim, thereby losing the ability to pay the applicable filing fee in installments. Ballinger v. West Virginia Division of Public Safety and Military Affairs, No. 2:11-cv-00435 (S.D. W. Va. June 23, 2011, ECF No. 5.)

Thereafter, on June 30, 2011, the plaintiff filed the instant complaint, in which he alleged as follows:

I was raped by hearing officer Brian Greenwood while in four point restraints and then he and others threatened to kill me if I told anyone and then they used threats on my life to rape me again and they filmed it saying they were making a porno and used threats on my life to force me to sign a consent form. This is not only a criminal offense but a violation of my constitutional rights. He and his wife stalked me to Muncie, Indiana and the Vienna mall in Wood County and he is taking good time from me here because he is afraid I will press criminal charges on him. They used electroshock therapy on me to make me forget what happened. But I remember now because he keeps showing me what he put on his Ipod, to torment me and keeps taking good time to keep me incarcerated that violates my constitutional rights for excessive loss of good time.

(Complaint, ECF No. 2, at 4-5.) He requested "fiscal damages." Id. at 5.

The undersigned, being advised that the plaintiff was scheduled to discharge his sentence on September 25, 2011, and in light of the serious allegations made by him, stayed this action pending the plaintiff's release. (Order entered July 22, 2011, ECF No. 5.) The Order required the plaintiff to inform the Clerk of his new address and telephone number within two weeks of his release. The plaintiff has not done so, and appears to have lost interest in this litigation.

The undersigned proposes that the presiding District Judge **FIND** that the plaintiff failed to comply with the Order entered July 22, 2011, and that he has made no effort to prosecute this litigation. It is respectfully **RECOMMENDED** that this action be dismissed without prejudice for failure to prosecute.

The plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the plaintiff shall have fourteen days (filing of objections) and three days (mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to Chief Judge Goodwin.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to the plaintiff.

Court staff has learned that the plaintiff's current address is:  
2501 W. Johnson Road, Muncie, Indiana 47304.

October 18, 2011  
Date

  
Mary E. Stanley  
United States Magistrate Judge